IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 20 OF 2007
IN
SUIT NO. 703 OF 2005

Shirley Naresh Rajwani .. Plaintiff.

V/s.

M/s.Nensee Construction Pvt.Ltd. and two other. .. Defendants.

Mr.Shiraz Rustamjee with J.G.Shukla i/by M/s.G.H.Shukla & Co. for the the Plaintiff.

Mr.V.R.Dhond with B.Colabawala & Madhur Rai i/by M/s. Negandhi Shah & Himayatollah & Co. for the Defendant Nos.1 & 2.

Mr.Pankaj Shah for the Defendant No.5.

CORAM : S. A. BOBDE, J.

DATED : 02nd MARCH, 2007.

P.C.:

. By this motion, the plaintiff seeks an injunction for restraining the defendants Nos. 1 and 2 from pursuing the application for the membership of the defendant No.2 in the defendant No.3 Co-operative Housing Society and also for an injunction, restraining the defendant Nos. 1 and 2 from disposing of, transferring or creating any third party rights in respect of the suit flat described in Exh.‘A’ to the plaint.

2. The plaintiff has sued for specific performance, interalia, for a declaration that there is a valid, subsisting and binding agreement between the plaintiff and the defendant No.1 for sale by the defendant No.1 to the plaintiff of the Flat No.101 at Venus Apartment, Chembur and for a decree for a specific performance, directing the defendants 1 and 2 to perform the agreement for sale in respect of the said suit flat along with car parking etc.. The plaintiff has also prayed for some other reliefs, which are not strictly relevant here.

3. In short, the plaintiff's claim is that the defendant Nos.1 & 2, who are the builders of the building in question, have allotted flat No. 101 to the plaintiff in place of flat No.81, allotted earlier, (As per Exh.'K'), for a consideration of Rs. 8,50,000/- which they have received and for which the defendants had executed a receipt (Exh.'L'). Thus the suit is based on the allotment letter at Exh.'K' and the receipt allegedly executed by the defendants on having received consideration from the plaintiff.

4. The plaintiff is clearly not entitled to any relief in the present notice of motion because relief

based on the same documents at Exh ‘K’ & ‘L’, was denied on the ground that the documents are fabricated as observed vide order dated 22nd August, 2005 of this court, passed by Kamdar, J. This observation was made by the said learned single Judge of this court after the originals of the documents that were directed to be produced alongwith an affidavit, were examined. After the court found that the documents are fabricated, the plaintiff withdrew that notice of motion when it came up for final hearing on 7th of September, 2006. Thereafter, the plaintiff has again taken out this motion because according to her, the court has vide order dated 7th of September, 2006 granted liberty to the plaintiff to take out this notice of motion. The order of 7th September, 2006 was made by this court in the following circumstances :

. The defendant No.3 society has filed suit No. 550 of 2005 for a declaration that the agreement dated 4th of June, 2000, by which the society had permitted the defendant Nos.1 and 2 to built three floors in its building has been validly terminated. Apparently, in that suit the Society had obtained an order, directing the defendant No.2-Ajay R.Nensee to maintain status- quo in respect of the flat No.101. There was a move by the parties in the suit No.550 of 2005 i.e. the Society and

the defendants No.1 and 2 herein, to settle the matter between them i.e.Nensee Constructions Pvt.Ltd., and Ajay Raychand Nensee to settle the matter between them. Obviously such a settlement would have affected the plaintiff's right, if any. Therefore, this court observed that before filing any settlement in the Suit No.550 of 2005, the third defendant Society should give at-least one week's notice of the proposed settlement to the plaintiff.

5. Taking clue from the order of this court, directing the parties to give notice to the plaintiff, the plaintiff has again moved this court by taking out this notice of motion, which is for the same relief, which was denied to her on the ground that the documents on which she has sued are fabricated.

6. Mr. Rustamjee, the learned counsel for the plaintiff submitted that one of the reasons why the plaintiff has taken out this notice of motion is because the defendant society is about to grant membership to the defendant No.2 Ajay Nensee in pursuance of the orders of the Registrars of the Co-operative Societies and, therefore, the plaintiff is entitled to move the court again for an interim relief since she has a claim in respect of the flat No.101, for which the defendant

society is proposing to grant membership to the defendant No.2 i.e. Ajay R.Nensee.

7. I do not see any merit in this contention because the documents on the basis on which the plaintiff claims specific performance of the agreement in respect of the Flat No.101, have been found to be the fabricated documents by this court. Admittedly, the observation of this court that the documents on the basis of which the plaintiff has based her suit are fabricated, holds the field in the sense that the said observation has not been set aside by any court. If, therefore, the plaintiff does not have any prima facie right in respect of flat No.101, I do not see what difference does it make to the plaintiff's claim that the Society intends to grant membership to the defendant No.2 in respect of the suit flat No.101. There is no change in the plaintiff's status and legal character or the basis of the suit.

8. In view of the above, I see no merit in the motion. The same is hereby dismissed.

(S.A.BOBDE,J.)

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